IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No. 24500 of 1995

Between:

The Divisional Engineer,
Telecom, Coaxial Cable Project,
Hyderabad. ..... PETITIONER

AND

1 Ch.Mallikarjuna Rao, S/o. Sri Muthaiah,
R/o. Chalavada Post, Tenali Tq,
Guntur District.
2 The Presiding Officer,
Industrial Tribunal No.1 M.J.Market Road,
Hyderabad. .....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ of mandamus or any other appropriate Writ, order or direction, declaring the relief granted by the Industrial Tribunal No.1, Hyderabad, the respondent-2 herein in I.D.No. 35/94 dated 21-4-1995 as illegal and without jurisdiction and consequently set aside the above I.D.No. 35/94.

Counsel for the Petitioner : Mr.A.RAJASHEKAR REDDY (SC FOR CG)

Counsel for Respondent No.1 : Mr.C.SURYANARAYANA

Counsel for Respondent No.2 : G.P. FOR LABOUR

The Court made the following :

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the relief granted by the Industrial Tribunal No.1, Hyderabad in I.D.No. 35 of 1994 dated 21.4.1995 as arbitrary and illegal, wherein the Tribunal directed the management to reinstate the workman into service as casual mazdoor forthwith along with backwages from 21.4.1994 and with continuity of service and further declare that the petitioner is also entitled for protection of seniority among the casual mazdoors employed by the management.

It is the case of the first respondent-workman that while he was working as casual mazdoor with the petitioner-management, his services were retrenched w.e.f. 1.3.1988 without following due procedure as required under Section 25-F and G of the Industrial Disputes Act, 1947 (for short 'the act') and therefore, he raised a dispute before the Conciliation Officer and ultimately the following issue has been referred to the Industrial Tribunal No.1, Hyderabad for its adjudication.

> "Whether the action of the Divisional Engineer, Telecom, Coaxial Cable Project, Hyderabad in not granting temporary status to Sri Ch.Mallikarjuna Rao, Ex-Casual Mazdoor and subsequent terminating his services is justified? If not, what relief he is entitled to?"

It is the case of the workman that he had worked for more than 689 days from 1.4.1986 to 28.2.1988 and had put in more than 240 days in one year preceding the date of termination i.e. 1.3.1988. According to him, he was not paid compensation as per the mandatory provisions of Section 25-F of the Act and further the Management has also not followed the provisions of Section 25-G of the Act though the work is available.

On the other hand, the Management filed a detailed counter denying the averments made by the workman. It was stated in the counter filed before the Labour Court that the respondent-workman was engaged purely on day-to-day basis and no order of appointment was issued in his favour. It is stated that there was no practice

of giving any appointment letter, discharge memo or notice in writing to the daily rated casual labours as they are not borne on any regular establishment. As the project works are of not continuous in nature, the workman was engaged for a specific period only. Moreover, the workman has deserted the casual employment for better prospects w.e.f. 1.3.1988 and got more lucrative job at that time. After 1.3.1988 the services of the workman was unavailable since he was engaged himself in a profitable avocation. Therefore, he was not entitled for any relief and sought to dismiss the claim petition.

In support of his case, the workman examined himself as W.W.1 and marked Exhibit W.1. On behalf of the Management, M.W.1 was examined, but however, no documents were marked.

After appreciation of the entire evidence on record, the Industrial Tribunal came to the conclusion that by retrenching the services of the workman, the management has not followed the mandatory provisions of Section 25-F of the Act. Apart from this, it is in the evidence of W.W.1 that two persons by name Iramaiah and Peter who were juniors to the workman, are still being continued. Under these circumstances, Industrial Tribunal held that the Management has violated the statutory provisions of Section 25-F of the Act and directed reinstatement of the petitioner with continuity of service and backwages from the date of reference i.e. 21.4.1994.

The learned counsel for the petitioner-Management submits that the Tribunal below has not considered the evidence on record properly and misdirected itself that there is a violation of Section 25-F and 25-G of the Act. He also contends that the Tribunal below failed to see that the dispute itself was raised after three and half years and as such the workman is not entitled at least for continuity of service and backwages.

The learned counsel for the respondent-workman supported the award passed by the Industrial Tribunal.

I have given earnest consideration to the respective submissions made by the learned counsel and gone through the Award passed by the Industrial Tribunal and other material available on record.

At the outset, I am of the opinion that the Tribunal below has meticulously discussed each and every aspect of the evidence and came to a right conclusion

that the petitioner-management had failed to comply with the mandatory provisions of Section 25-F of the Act apart from not following the provisions of Section 25-G of the Act. It is in the evidence of W.W.1 (workman) that he worked as a casual labourer from 14.1986 till 29.2.1988 for a total period of 689 days and his services were retrenched w.e.f. 1.3.1988 and he was not given any notice or one month salary as required under law. The management witness i.e. M.W.1 who was working as Sub-Divisional Engineer deposed that the workman was engaged initially on 1.4.1986 in Coaxial installation work as casual labour and that it was not a regular recruitment following the selection procedure and reservation norms. Except this, there was no evidence to show that the workman did not work continuously for 689 days from 1.4.1986 and also that he worked for 240 days continuously in a year preceding the date of his termination from service i.e. 1.3.1988. Under those circumstances, the Tribunal below has rightly come to the conclusion that the termination of the petitioner from service was contrary to the provisions of Section 25-F and 25-G of the Act.

In view of the above, I am of the opinion that the order of the Tribunal below dated 21.4.1995 is a well-reasoned order and does not call for any interference at the hands of this Court. Since the Tribunal below itself has taken care of in awarding backwages only from the date of reference i.e. 21.4.1994, but not from the date of termination of service of the workman i.e. 1.3.1998, the writ petition is devoid of merits and is liable to be dismissed.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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C.V.RAMULU, J

Date: 3.3.2005

DA

To

1 The Presiding Officer, Industrial Tribunal No.1 M.J.Market Road, Hyderabad.

2 Two CCs to the G.P. for Labour, High Court Buildings,

Hyderabad (OUT).

3 Two CD copies.